

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

PROSEGUR SECURITY GROUP (f/k/a COMMAND
SECURITY CORPORATION)¹

Employer

Case 05-RC-260371

and

COMMUNICATION WORKERS OF AMERICA,
AFL-CIO²

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (“Act”), a hearing on this petition was conducted before a hearing officer of the National Labor Relations Board (“Board”) to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.³ Petitioner seeks to represent a unit of all full-time and regular part-time dispatchers (including level I dispatchers, level II dispatchers, level III dispatchers, watch desk assignment dispatchers, and lead dispatchers), alarm technicians, and data analysts employed by the Employer at the United States Postal Service’s (USPS’s) National Law Enforcement Communications Center (NLECC) located in Sterling, Virginia, known as the Dulles NLECC. The Dulles NLECC is the only facility in question in this proceeding.⁴ The petition reflects that there are approximately 26 employees in the petitioned-for unit, including 22 dispatchers, 3 alarm technicians, and 1 data analyst.

¹ The Employer’s name appears as amended by stipulation of the parties.

² Petitioner’s name appears as amended by stipulation of the parties.

³ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. Petitioner is a labor organization within the meaning of the Act.
- d. Petitioner seeks to represent certain employees of the Employer in the unit described in the instant petition, but the Employer declines to recognize Petitioner as the collective-bargaining representative of those employees.
- e. There is no collective-bargaining agreement covering any of the employees in the voting group sought in this petition and the parties do not contend there is any contract bar to this proceeding.
- f. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

⁴ The USPS operates another NLECC located in Fort Worth, Texas.

The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.⁵ The parties further stipulated, and I find, that there is no collective-bargaining agreement covering any of the employees in the petitioned-for unit, and there is no contract bar to the petition. Finally, the parties stipulated that the Petitioner currently admits to membership or is affiliated directly or indirectly with an organization that admits to membership employees other than guards, and that as such, Petitioner is not qualified to represent a unit of guards within the meaning of Section 9(b)(3) of the Act.

I. ISSUES, POSITIONS OF THE PARTIES, AND DETERMINATION

The Employer primarily contends that the petition should be dismissed on the ground that all of the petitioned-for employees are guards within the meaning of the Act. Under the Employer's argument, the petition should be dismissed because the Petitioner may not be certified as the employees' representative, as it admits to membership individuals who are not employed as guards. The Employer also contends that the lead dispatchers are statutory supervisors within the meaning of Section 2(11) of the Act, given their asserted authority to assign and responsibly direct the work of employees using independent judgment; discipline; effectively recommend discipline, hiring and promotion of other employees; and other secondary indicia.⁶ Petitioner denies that the petitioned-for employees are guards within the meaning of the Act, and that the lead dispatchers possess any indicia of supervisory authority.

Based on the record and relevant Board law, I conclude that the employees in the petitioned-for unit are guards within the meaning of Section 9(b)(3) of the Act. Accordingly, because the Petitioner concedes it cannot represent a unit of guards, I am dismissing the petition. However, should the Board disagree with my conclusion, I further conclude that the Employer has not met its burden to show that the lead dispatchers are statutory supervisors. Based on the record developed in this case, the lead dispatchers do not exercise authority in the interest of the Employer requiring the use of independent judgment to assign; responsibly direct; discipline, or effectively recommend the discipline, hiring or promotion of other employees required for a finding of supervisory status.

⁵ The parties stipulated that the Employer, a corporation with an office and place of business in Herndon, Virginia, is engaged in the business of providing security services to private and governmental entities, including the United States Postal Service at the NLECC in Dulles, Virginia. During the 12-month period ending April 30, 2020, a representative period, the Employer performed services valued in excess of \$50,000 in states other than the Commonwealth of Virginia.

⁶ In its brief, the Employer addresses the credibility of Petitioner's main witness. Although a representation case hearing is a formal proceeding, it is investigatory and non-adversarial. See, *Casehandling Manual Part Two: Representation Proceedings*, Sections 11181 and 11185. Accordingly, I have not made credibility determinations in regard to the testimony adduced at hearing. Rather, my decision is based on the evidence adduced in the record.

II. FACTS

A. The Employer's Operations

The Employer provides security services to private and government entities around the world. The Employer's three main lines of business include: secure movement of cash and valuables; residential alarm installation, monitoring and maintenance; and guarding operations, including manned guarding (armed and unarmed) as well as electronic security systems installation, monitoring and maintenance. Only the Employer's third line of business is relevant to this case. This line of business of guarding operations pairs manned guarding with technology for an "integrated service model" approach to security and the protection of persons and property.

In about 2014, the Employer's predecessor, Command Security Corporation, was awarded a contract to perform security work for the United States Postal Inspection Service (USPIS) at 58 USPS postal facilities located among 17 states. The USPIS is the law enforcement arm of the USPS; it supports and protects the USPS, its employees, postal facilities, and customers by enforcing the laws related to the nation's mail system. The Employer assumed the USPS contract in about 2018 when it purchased Command Security Corporation. The USPS contract includes two statements of work: one for the provision of manned guarding operations among the postal facilities; and the other for the installation, monitoring and maintenance of electronic security systems among the postal facilities from the Dulles NLECC where the petitioned-for employees work. The Dulles NLECC is regulated by the Commonwealth of Virginia Department of Criminal Justice Services (VDCJS). Based on their duties related to dispatching of law enforcement agencies, all employees employed at the Dulles NLECC must obtain security clearance and special certifications from the VDCJS and undergo in-depth training regarding protocols for how to respond to a myriad of different security-related situations. The NLECC statement of work provides that the Employer was contracted to support the NLECC's mission to provide "critical public safety functions around-the clock, without interruption of service." The NLECC statement of work further sets forth that the scope of work at the Dulles NLECC is to obtain dispatch and alarm monitoring services in support of the USPIS at each NLECC facility. This includes the NLECC performing work such as "monitoring multiple types of alarm systems, closed-circuit television, dispatch communications and access to national law enforcement databases." The NLECC statement of work further provides that all employees must possess the "ability to maintain professionalism under highly stressful situations."

Senior Vice President of US Security Operations Dane Dodd is responsible for all of the Employer's guarding operations across North America, including electronic security operations at the Dulles NLECC. Administrative Site Lead (ASL) Michael Robson manages the Dulles NLECC under the direction of Dodd. All of the petitioned-for employees report to Robson.

The Employer operates three around-the-clock shifts every day of the year at the Dulles NLECC: 6:00 a.m. to 2:30 p.m. (first shift); 2:00 p.m. to 10:30 p.m. (second shift); and 10:00

p.m. to 6:30 a.m. (third shift). One lead dispatcher and about five dispatchers are assigned to each shift. The record is silent regarding the shift hours of the alarm technicians and data analyst. Since alarm technicians are cross-trained as dispatchers, it is presumed that they, like the dispatchers, work among the three shifts. All employees employed by Employer at the Dulles NLECC wear a uniform consisting of khaki pants and a polo shirt. All employees are provided a USPS-issued picture identification badge which identifies them as a NLECC contractor and permits secured access into the Dulles NLECC. ASL Robson works first shift hours from 7:30 a.m. to 4:00 p.m., Monday through Friday. There are also USPIS communications center operators and specialists (CCOSs) who work at the Dulles NLECC from 8:00 a.m. to 4:30 p.m., Monday through Friday.

B. Dispatchers

The Commonwealth of Virginia regulates the security industry and the VDCJS specifically identifies and maintains regulation over central alarm monitors and central station dispatchers, which includes the dispatchers employed by the Employer at the Dulles NLECC. In this regard, all of the petitioned-for dispatchers must be certified and recertified every two years in central station dispatch by the Commonwealth of Virginia, and are issued “central dispatcher” identification cards by the VDCJS.

The position summary for dispatcher in the NLECC statement of work states that dispatcher duties generally include “[p]rovid[ing] event logging and recording of centrally managed law enforcement radio monitoring, monitoring of intrusion detection systems, non-emergency/emergency dispatch[ing], incident reporting, [and handling of] other investigative databases. ...” The dispatchers receive and respond to inbound calls and radio communications via their NLECC computer screens. Inbound calls and radio communications to dispatchers are generated mainly by USPS and USPIS field employees, agents and inspectors. However, they can also be automated/programmed calls related to installed alarms at the postal facilities. While alarm issues are handled specifically by the alarm technicians as described below, the dispatchers handle calls related to alarms as needed, due to the fact that there are only three alarm technicians. Dispatchers respond to incoming calls and radio communications by routing them via their NLECC computer to law enforcement agencies, including local police departments, USPIS inspectors or postal police officers,⁷ or USPS Office of Inspector General (OIG) inspectors.⁸ This technology of dispatching emergency services assisted by a computer is referred to as Computer Aided/Assisted Dispatch (CAD).⁹ The dispatchers’ handling of calls and radio communications, including the decision of which law enforcement entity to route calls to, is strictly guided by the USPIS’s Incident Response Guidelines (IRGs), Standard Operating

⁷ According to uspis.gov, which I take administrative notice of, the USPIS employs unarmed inspectors/officers as well as an elite police force of armed officers tasked with securing USPS facilities and postal vehicles.

⁸ According to usps.gov, which I take administrative notice of, the USPS OIG is another arm of the USPS that conducts independent internal audits and investigations of the USPS to detect fraud, waste, and misconduct related to postal crimes.

⁹ The acronym of CAD was referenced in the record but was not defined by the parties. The definition of CAD, found at fema.gov, which I take administrative notice of, is part of the U.S. Department of Homeland Security/Federal Emergency Management Agency (FEMA) acronyms, abbreviations, and terms.

Procedures (SOPs), and operating manuals maintained at the NLECC. These manuals, maintained at the NLECC, are referenced by the dispatchers on a daily basis and set forth specific scenarios to guide the dispatchers in their responses.

As noted, the 22 dispatchers are grouped into three levels: level I, level II and level III. Level I dispatchers are the newly hired dispatchers. They primarily handle calls related to minor postal facility incidents such as alarm notifications, lost mail, or a negligible mail theft. They are trained on-the-job by more experienced level II and III dispatchers including lead dispatchers.

Level II and III dispatchers are the more experienced dispatchers. They primarily handle calls related to more serious postal facility incidents, such as a USPS Postmaster or employee calling to report a suspicious package, or a trespasser found on postal facility premises; or an automated call showing a burglar alarm activating at a facility. The primary difference between level II and level III dispatchers is the complexity of calls handled by them. Level III dispatchers handle the most complex and serious calls, many of which require immediate emergency assistance. Level II and III dispatchers are certified by the FBI to access the FBI's National Crime Information Center (NCIC) database. While typically only sworn law enforcement agents are granted access to the NCIC database, the dispatchers herein are granted secured NCIC access at the Dulles NLECC in order to assist USPIS and OIG inspectors and officers in the field who do not have immediate and direct computer access. Through the NCIC database, dispatchers are authorized to run license plates and driver licenses, access arrest warrants, and obtain confirmation for warrants as requested by USPIS and OIG field agents. Urgent and expedited matters and high-profile incidents, such as bomb threats, or mail incidents involving explosives are specifically handled by a level III watch desk dispatcher. The watch desk dispatcher monitors incoming report feeds in real time and routes the information to the proper authorities per guidance from the NLECC IRGs, SOPs and operating manuals.

All dispatchers are required to document and log all calls and communications by drafting incident reports. Like the dispatching of calls, all reports are dictated and guided by the NLECC IRGs, SOPs and operating manuals. All dispatcher reports are reviewed by a lead dispatcher, mostly for formatting and grammatical errors, then uploaded to the NLECC database and transmitted to a USPIS CCOS or manager. There is some record evidence that USPIS inspectors working at the NLECC from 8:00 a.m. to 4:30 p.m., Monday through Friday, also dispatch incoming calls to law enforcement authorities.

C. Lead Dispatchers

The six lead dispatchers, also known as team leads or shift leads, are all classified as level III dispatchers. The position summary for lead dispatcher in the NLECC statement of work states that lead dispatcher duties generally include "lead[ing] daily activities/assignment of the dispatch staff. Responsible for ensuring that dispatcher services for the assigned shift meet operational requirements, following [SOPs]. The lead dispatcher will interact with NLECC

shift supervisors,¹⁰ and report directly to the supplier's site lead." A separate job description for lead dispatcher states, in part, that they oversee performance of dispatchers' daily activities; provide basic dispatcher training; plan, assign and direct work among dispatchers; assist the ASL to ensure staffing and scheduling; and implement disciplinary action for dispatchers up to verbal and written counseling. Like the other level III dispatchers, the lead dispatchers handle difficult calls. They manage and counsel the other dispatchers on their shift by providing on-the-job training, reviewing dispatcher reports, and documenting deficiencies of the dispatchers' performance. Experienced level III dispatchers also counsel and train dispatchers in their duties, review dispatcher reports, and report dispatcher deficiencies to the ASL.

Lead dispatchers are not involved in scheduling the hours of any employees. Day-to-day tasks of the dispatchers are largely determined by discussion among themselves, as well as the dispatchers' experience levels. Dispatchers discuss among themselves when they will take designated breaks based on their work loads. Additionally, although calls and communications regarding incidents vary, dispatcher tasks are routine and do not vary from day to day, and are largely guided by the IRGs, SOPs, and operational manuals, as noted above. Lead dispatchers review all dispatcher reports mostly for formatting and grammatical purposes. In this regard, a lead dispatcher can make corrections to the report, or send it back to the dispatcher to revise before uploading it to the NLECC database and transmitting it to a USPIS CCOS or manager.

The Employer has a four-step progressive discipline policy: step one is verbal warning/counseling; step two is written warning; step three is final written warning/performance improvement plan (PIP);¹¹ and step four is termination. The lead dispatchers are not involved in steps three and four. However, lead dispatchers document dispatcher deficiencies via e-mails to the ASL. One of the e-mails in the record is referenced as a "non-documented (official) verbal warning." The other e-mails are documented observations of the lead dispatchers regarding dispatcher performance. None of the e-mails from lead dispatchers contain any recommendations for discipline. Three PIPs are also contained in the record. None of the PIPs reference that they are in any part based on lead dispatcher recommendations or reports by lead of dispatchers' deficiencies. The record is absent of evidence that any lead dispatchers have been counseled or disciplined by the ASL regarding the dispatchers' deficient performance.

There is one example in the record in which ALS Robson asked the lead dispatchers via e-mail for their "thoughts on areas in need of improvement" regarding a dispatcher that Robson was contemplating about undergoing training to become a lead dispatcher. One lead dispatcher responded to Robson's e-mail, stating concerns about the dispatcher's attendance and level of confidence. There is no evidence that the dispatcher in question was promoted to lead dispatcher; rather, the record indicates the dispatcher is performing lead duties on a trial basis. In another example in the record, ALS Robson asked the lead dispatchers via e-mail for their

¹⁰ There are no shift supervisors employed at the Dulles NLECC.

¹¹ The progressive discipline policy also references an "independent development plan" which does not appear to differ in substance from a PIP.

“thoughts” about six listed candidates for hiring. Although the record indicates that resumes of these candidates were reviewed by the lead dispatchers, the record is unclear as to what was provided. One lead dispatcher responded to Robson’s e-mail without making any recommendation. There is no evidence that any of the named candidates were hired; one of the candidates was noted as “being in the hiring process.”

Wages for all dispatchers are contractual per the contract between the Employer and USPS and per wage determinations set forth by the U.S. Department of Labor under the Services Contract Act. While the record is silent regarding wage rates of employees, lead dispatchers earn 50 cents more per hour than the other dispatchers. As noted, there is one lead dispatcher and about five dispatchers assigned to each shift. From about 4:00 p.m. to 7:30 a.m., when ALS Robson is absent from the facility, a lead dispatcher is the highest ranking official on-site at the Dulles NLECC. During this time, lead dispatchers are tasked with handling employee call-offs. There are minimum staffing requirements for the Employer’s employees at the Dulles NLECC so that when an employee unexpectedly calls off, a call-in employee is often not necessary. If it is necessary to call in an employee, the lead dispatcher follows a list prepared by management with employee contact information. The record evidence discloses that the lead dispatchers have participated in management training in leadership and supervisory skills.

D. Alarm Technicians

The position summary for alarm technician in the NLECC statement of work states that alarm technicians “provide centrally managed technical support in the areas of alarm panel programming, diagnostic and service support and support to contract field technicians.”¹² As noted, the three alarm technicians are cross-trained as dispatchers and perform the dispatch duties described above as needed. They are primarily responsible for alarm-related matters including performing technical maintenance checks on and updating postal facility alarms remotely via their NLECC computer. They dispatch local law enforcement for some alarm checks, but more often they contact USPIS inspectors to respond on-site to service defective alarms. They work remotely with the USPIS field technician at the site to resolve alarm issues. If an alarm issue cannot be resolved remotely or by the USPIS agent on-site, the alarm technicians will write a trouble ticket for manual service on the alarm to be performed by Securitas, which has retained a longstanding USPS alarm servicing contract for the same postal facilities covered in the Employer’s NLECC statement of work. The alarm technicians also issue alarm codes to arm and/or disarm active alarms at the postal facilities by remotely inputting a code into the alarm panel system via their NLECC computer. This is often requested by postal employees who are having alarm-related issues in attempting to open or close a postal facility.

¹² The position of lead alarm technician is also referenced in the NLECC statement of work, however, that position does not exist at the Dulles NLECC.

E. Data Analyst

The position summary for data analyst in the NLECC statement of work states that a data analyst “provides detailed analytic support to the USPIIS; ...[runs and creates] reports; ...update[s] NLECC databases and obtain[s] intrusion detection system permits. ...” The data analyst is primarily responsible for inputting and updating contact information of managers and supervisors at the postal facilities into the alarm system monitoring database. The data analyst communicates regularly with postal facility management to gather this contact information. Up-to-date contact information is critical to support the work of the dispatchers and alarm technicians in dispatching law enforcement agents to the postal facilities. Some municipalities require postal facilities in their geographical jurisdiction to maintain alarm permits on file at the local police department for officers to respond to emergency and non-emergency matters at such postal facilities. The data analyst is responsible for obtaining such alarm permits for postal facilities and keeping them up to date within the local police departments. Additionally, the data analyst is responsible for running background checks and criminal history reports to obtain security clearance and access control for visitors to postal facilities and the Dulles NLECC. For visitors to the postal facilities, the data analyst will run the reports and transmit them directly to the facility manager who will issue a visitor pass on-site. For visitors to the NLECC, the data analyst will run the reports and transmit them to a NLECC manager who will screen and escort the visitor at the time of arrival. Finally, the data analyst also prepares trend analysis reports to examine performance trends and areas for improvement at the Dulles NLECC.

III. ANALYSIS

A. Board Law on Statutory Guards

Under Section 9(b)(3), a unit is not appropriate “if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises.” To be a guard within the meaning of Section 9(b)(3), an employee must enforce against employees and other persons rules to protect the property of the employer's premises. *Petroleum Chemicals*, 121 NLRB 630 (1958). The Board evaluates whether employees are guards in terms of whether they carry out “traditional police and plant security functions.” *Boeing Co.*, 328 NLRB 128, 130 (1999). These functions include the enforcement of rules, conducting of patrols to discover rules violations or other security concerns, the use of weapons, security training, monitoring and controlling access to property, and “wearing guard-type uniforms or displaying other indicia of guard status.” *Id.* An employee is a statutory guard when guard functions constitute more than “a minor or incidental part of their overall responsibilities.” *Id.* In weighing guard and non-guard responsibilities, the Board assesses the “primary function” of an employee. *55 Liberty Owners Corp.*, 318 NLRB 308, 310 (1995). For example, the Board has found employees to not be guards when their “receptionist or clerical duties” predominated over their guard responsibilities. *Wolverine Dispatch, Inc.*, 321 NLRB 796, 798 (1996). It is the nature of the duties of guards, not the percentage of time spent in such duties, which is controlling. *Madison Square Garden*, 333 NLRB 643, 645-646 (2001) (citing *Walterboro Manufacturing Corporation*, 106 NLRB 1383, 1384 (1953)).

However, guard status is not limited to individuals with police powers. The Board has consistently recognized that when the employees in question meet the statutory requirement for guards, the fact that they do not take direct action against violators, but instead report suspicious activity to a third party, will not defeat their guard status. In this regard, the Board has held that dispatchers who do not personally confront employees or others but merely report violations may be found guards where their “authority to observe and report infractions is not merely incidental to their duties, but instead constitutes one of their primary responsibilities, which is an essential link in their employer’s effort to safeguard its employees and enforce its rules.” *Rhode Island Hospital*, 313 NLRB 343, 347 (1993) (security dispatchers who monitor hospital’s closed-circuit television system and dispatch security officers to respond to calls from employees and other individuals regarding problems and emergencies, including those involving security and safety, are guards). See also, *MGM Grand Hotel*, 274 NLRB 139, 140 (1985) (operators who monitor hotel’s sophisticated life-safety system for significant security functions and report security problems and infractions to security officers are “closely involved in protecting the employer’s property and enforcing security” and are guards). In *Allen Services Company, Inc.*, 314 NLRB 1060, 1062 (1994), the Board concluded that unarmed part-time weekend security employees who did not directly confront others but instead reported suspicious circumstances were guards because “they possess and exercise responsibility to observe and report trespass infractions [which] is an essential part of the employer’s procedures for protecting the premises and equipment.” Other Board cases have similarly found that such employees do not carry firearms or have the same type of training required of police officers is not dispositive. *A.W. Schlesinger Geriatric Center*, 267 NLRB 1363, 1364 (1983) (maintenance employees who make rounds are guards although they have no special training and do not wear guard uniforms or carry firearms); *Wright Memorial Hospital*, 255 NLRB 1319, 1320 (1980) (employees who make security rounds but do not wear guard uniforms or carry firearms are guards).

It is not only the protection of the employer's property which satisfies the guard criteria. The Board has long held that the Section 9(b)(3) definition of guard applies equally to persons engaged in protecting property of the employer's customers. *Brink's Incorporated*, 226 NLRB 1182, 1183 (1976) (other citations omitted). To be a statutory guard, the employees’ “basic function must involve ‘directly and substantially, the protection of valuable property of the Employer's customers.’” *Purolator Courier Corp. (Purolator II)*, 300 NLRB 812, 814 (1990) (citing *Purolator Courier Corp. (Purolator I)*, 266 NLRB 384, 385 (1983)). Thus, the critical inquiry is: (a) whether the employees in question protect the employer's property, or the safety of persons on the employer's premises and/or; (b) whether the employees protect customers' property or persons on that property.

B. Application of Board Law to the Petitioned-for Employees

If the employees in the petitioned-for unit are guards within the meaning of Section 9(b)(3), Petitioner cannot represent the petitioned-for unit because, as conceded, it represents non-guard employees. The distinction between guards and non-guards often presents close issues that can be answered only by carefully examining their duties. The issue here is whether

the basic duties of the petitioned-for employees focus on the *protection* of the Employer's and/or USPS customer property so as to make the employees guards under Section 9(b)(3).

I am not unmindful that the petitioned-for employees have no direct individual enforcement authority to protect property or the safety of persons on the Employer's or USPS customer premises. However, the overall record establishes that they are significantly involved in security functions related to the USPS customer postal facilities. In this regard, the NLECC statement of work makes it clear that the Employer was contracted by the USPS for the specific purpose of obtaining dispatch and alarm monitoring services to support the "NLECC's mission to provide "critical public safety functions around-the clock, without interruption of service." Additionally, to a lesser degree with regard to the data analyst as discussed below, the petitioned-for employees are involved in security functions related to the Dulles NLECC.

Dispatchers and alarm technicians perform guard functions that involve protecting USPS customer property at 58 postal facilities among 17 states and ensuring the safety of USPS employees and customers among those facilities. Notably, the dispatchers spend a majority of their time handling calls and monitoring radio communications related exclusively to security issues. They receive detailed training and are evaluated in handling a range of matters from routine incidents involving reports of a suspicious packages, mail theft, trespassers on postal facility premises, and alarm activations to urgent and expedited matters involving reports of bomb threats or mail incidents involving explosives. They dispatch law enforcement to respond to such emergency and non-emergency security incidents and they document their actions in incident reports which are submitted to their supervisors, NLECC management, and law enforcement officers. I agree with Petitioner that their reporting duties are diminished because their actions in responding to calls are dictated by NLECC IRGs, SOPs and operational manuals. However, the fact that the petitioned-for employees are largely fielding calls received about alleged crimes against the USPS tends toward finding guard status. Indeed, all employees are required to possess the "ability to maintain professionalism under highly stressful situations." Level III dispatchers, in particular, have been trained in and use the NCIC system to obtain information about vehicle ownership and outstanding warrants in situations involving suspicious activity on postal facility premises. It is the dispatchers that initiate investigations of matters of suspicious activities which are thereafter concluded by law enforcement members. The record evidence demonstrates that the dispatchers' responsibilities are an essential link in the Employer's effort to safeguard USPS property, employees and visitors and enforce its rules. *Rhode Island Hospital*, 343 NLRB at 347; *A. W. Schlesinger Geriatric Center*, 267 NLRB at 1364; *Crossroads Community Correctional Center*, 308 NLRB 558, 562 (1992).

Alarm technicians, who are all cross-trained as dispatchers, spend a majority of their time handling and responding to security-related alarm issues. While they attempt to handle alarm issues remotely either on their own or working with an on-site USPIS inspector, they dispatch law enforcement to further investigate security-related alarm incidents if necessary. Not only are alarm technicians, like dispatchers, responsible for receiving and dispatching calls requiring the response of law enforcement personnel, they additionally operate and monitor sophisticated intrusion detection alarm systems and issue alarm codes to arm and disarm active alarms at USPS postal facilities. The evidence indicates that alarm technicians' duties in responding to

alarms and taking appropriate action is an essential part of the Employer's procedures for protecting USPS customer premises and equipment. *MGM*, 274 NLRB at 140; *Rhode Island Hospital*, 313 NLRB at 347. I find Petitioner's reliance on dated Board decisions in *ADT II*, 160 NLRB 1130, 1138 (1966) and *Caterpillar Tractor Co.*, 109 NLRB 871, 871 (1954), holding that employees who monitored alarm systems were not statutory guards is misplaced. In the more recent *MGM*, the Board distinguished earlier cases such as *Caterpillar Tractor*, noting that an advanced security system "represents a technological advance in alarm systems which, in our opinion, was not contemplated by the circumstances which provided the bases for the holdings in prior Board cases." *MGM* 274 NLRB at 140, fn. 9.

The fact that the dispatchers and alarm technicians are instructed to observe and report suspicious activities and violations to other persons without personally confronting others or taking direct action against violators does not defeat their guard status. *Rhode Island Hospital*, 313 NLRB at 347; *MGM*, 274 NLRB at 140, fn. 10.; *A.W. Schlesinger Geriatric Center, Inc.*, 267 NLRB at 1363 (1983). Even though they do not have the power of police, their jobs *require* them to observe and report violations; they do not incidentally report incidents while performing other predominant non-security, non-guard-like duties. I consider this further compelling evidence that the dispatchers and alarm technicians are guards. See, *The Wackenhut Corporation*, 196 NLRB 278, 279 (1972) ("It is immaterial that the operators do not themselves have the power of police...[r]ather, it is sufficient that they possess and exercise responsibility to observe and report infractions, as this is an essential step in the procedure for enforcement of the [employer's] rules.").

The data analyst's primary responsibilities with regard to securing and maintaining alarm permits for USPS facilities and local police departments and inputting USPS contact information in the alarm monitoring database is critical to support the work of the dispatchers and alarm technicians. The data analyst is required to obtain the same security clearance and state certifications for working at the Dulles NLECC and is under the same supervision as the dispatchers and alarm technicians. Moreover, by running background checks and criminal history reports to obtain security clearance and access control for visitors USPS postal facilities and the Dulles NLECC, the data analyst is involved in enforcing USPS as well as NLECC rules forbidding unauthorized persons from entering USPS postal facilities and the Dulles NLECC. The record evidence demonstrates overall that, like the dispatchers and the alarm technicians, the data analyst's responsibilities are an essential link in the Employer's effort to safeguard USPS property, employees and visitors and enforce its rules. Furthermore, the dispatchers, alarm technicians and data analyst constitute an integrated group contributing to the basic primary objectives of the Employer's business related to the overall protection of USPS customer premises.

I have considered Petitioner's argument that guard status is intended to be applied in limited circumstances and there is no precedent from the Board that extends guard status to employees *solely* because an employee is an integral part of a security team. Petitioner applies this argument particularly to the status of the alarm technicians and the data analyst. However, the record herein contains more than just mere evidence that the alarm technicians and the data analyst's duties are part of the Employer's integrated security operations. This is one of many

relevant factors that I have considered in finding that the dispatchers, alarm technicians and data analyst are guards within the meaning of the Act. See, *MGM*, 274 NLRB at 140, fn. 10.

Petitioner erroneously states in its post-hearing brief that under *Bellagio, LLC v. NLRB*, 863 F.3d 839 (D.C. Cir. 2017), an employee must, at a minimum, be monitoring a live-video feed to be found to be a guard under Section 9(b)(3). In this regard, Petitioner argues that in merely forwarding information to third parties, the dispatchers are not observing any infractions of rules, monitoring any suspicious activity or directing any actions. In *Bellagio*, the surveillance technicians in question were charged with designing, installing and maintaining the employer/casino's surveillance department's gaming-floor camera system. Although the surveillance technicians did not carry a weapon, conduct patrols, physically confront others, *or watch live-video feeds*, the Court nevertheless found them to be guards because their duties were "'essential' to the process." *Id.* at 850 (other citations omitted). The Court therein specifically noted that the surveillance technicians' "lack of direct contact with wrongdoers does not detract from their guard status" and further that they performed an essential in the procedure for enforcement of the employer's rules. ..." *Id.* at 850. Regardless of whether the dispatchers here are required to monitor live-video feed, the Board has held that it is the nature of the duties performed by guards and not the percentage of time that they spend in performing guard duties that is controlling. *Madison Square Garden*, 333 NLRB at 645-646 (citing *Walterboro Manufacturing Corporation*, 106 NLRB at 1384); *Rhode Island Hospital* 313 NLRB at 346. As noted above, the dispatchers here spend their entire shift monitoring and reporting security issues generated by means other than a live-video feed system, including via inbound calls, radio communications, and automated alarm panels. In light of their duties described above, I do not find their lack in monitoring live-video feed to warrant a different result.

Petitioner also argues that a finding of guard status would run against the Congressional intent behind Section 9(b)(3) of preventing guards from having divided loyalties during a strike when they may be called to enforce rules against fellow non-guard union members. However, the Board has stated that the focus of inquiry is based on the circumstances of each case and particularly "whether the disputed employee engages in guard responsibilities that are not a minor or incidental part of their overall responsibilities." *The Boeing Company*, 328 NLRB at 130 (citing *Rhode Island Hospital*, 313 NLRB at 347). Based on my above analysis that the petitioned-for employees are guards within the meaning of the Act, I do not find merit in Petitioner's argument in this regard.

In conclusion, I find that the record establishes that the employees included in the petitioned-for unit are guards within the meaning of Section 9(b)(3) of the Act. Inasmuch as the parties have stipulated that Petitioner represents non-guard employees, the Petitioner is not qualified to represent the petitioned-for unit, and I therefore dismiss the petition in this case.

However, should the Board disagree with my conclusion and dismissal of the petition on the basis of the guard issue, I shall further analyze the secondary issue presented regarding the supervisory status of the lead dispatchers.¹³ On that point, I find that the Employer did not meet its burden of establishing that the lead dispatchers are supervisors under Section 2(11) of the Act.

C. Board Law on Statutory Supervisors

Section 2(11) of the Act defines a supervisor as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

Accordingly, under Section 2(11), individuals are deemed to be supervisors if they have authority to engage in any one of the above Section 2(11) indicia; their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and their authority is held in the interest of the employer. See, *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712–13 (2001) (citing *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573–74 (1994)).

Section 2(11)'s definition is read in the disjunctive, and thus, the Board considers possession of any one of its enumerated powers, if accompanied by independent judgment and exercised in the interest of the employer, sufficient to confer supervisory status. *Kentucky River*, 532 U.S. at 713. Supervisory status may likewise be established if the individual in question has the authority to effectively recommend one of the powers. See, *Children's Farm Home*, 324 NLRB 61, 65 (1997). The Board has held that an effective recommendation requires the absence of an independent investigation by superiors and not simply that the recommendation be followed. *Id.*

The burden of proving supervisory status rests on the party asserting that status. See, *Kentucky River*, 532 U.S. at 711; *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). Since supervisors are excluded from the Act's protection, the Board has been careful to avoid construing the statutory language too broadly. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1058 (2006) (citing *Oakwood Healthcare, Inc.*, 348 NLRB at 686). The Board requires supervisory status be established by a preponderance of the evidence. *Dean and DeLuca New York, Inc.*, 338 NLRB 1046, 1047 (2003). Lack of evidence is construed against the party asserting supervisory status. *Id.* at 1048.

To meet this standard, the party bearing the burden must establish that an individual "actually possesses" a supervisory power; mere inferences or conclusory statements of such power are insufficient. See, *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). Moreover, where evidence is in conflict or otherwise inconclusive for a particular Section 2(11)

¹³ The Employer does not argue that the lead dispatchers supervise the alarm technicians or data analyst.

indicium, the Board will decline to find supervisory status for that indicium. See, *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 793 (2003). Accordingly, job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper, absent independent evidence of the possession of the described authority. *Golden Crest*, 348 NLRB at 731 (citing *Training School at Vineland*, 332 NLRB 1412, 1416 (2000)).

Indicia other than those enumerated in Section 2(11) of the Act are secondary indicia. Although secondary indicia may be considered in determining supervisory issues, they are not dispositive. In the absence of one of the enumerated primary indicia, secondary indicia, standing alone, are insufficient to establish supervisory status. *St. Francis Medical Center-West*, 323 NLRB 1046 (1997).

D. Application of Board Law to the Lead Dispatchers

The record is absent of any evidence that the dispatchers, alarm technicians or data analyst report directly to the lead dispatchers. The Employer asserts that the lead dispatchers are statutory supervisors based on their authority to assign work to and responsibly direct other employees; discipline; effectively recommend the discipline, hire and promotion of other employees; and other secondary indicia of supervisory status.

i. Assignment of Work

The Board in *Oakwood* defined assigning work as “the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” *Oakwood*, 348 NLRB at 689. Consistent with *Kentucky River*, the *Oakwood* Board adopted an interpretation of “independent judgment” that applies to any supervisory function at issue “without regard to whether the judgment is exercised using professional or technical expertise.” *Id.* at 692. The Board explained that “professional or technical judgments involving the use of independent judgment are supervisory if they involve one of the 12 supervisory functions of Section 2(11).” *Id.* The Board then set forth standards governing whether the exercise of the Section 2(11) acts are carried out with independent judgment: “actions form a spectrum between the extremes of completely free actions and completely controlled ones, and the degree of independence necessary to constitute a judgment as ‘independent’ under the Act lies somewhere in between these extremes.” *Id.* at 693. The Board found that the relevant test for supervisory status utilizing independent judgment is that “an individual must at minimum act, or effectively recommend action, *free of the control of others* and form an opinion or evaluation by discerning and comparing data.” *Id.* at 693. (emphasis added). Further, the judgment must involve a degree of discretion that rises above the “routine or clerical.” *Id.* at 693

There is limited record evidence regarding the element of place and set up of dispatcher workstations at the Dulles NLECC. As all of the dispatchers perform the same general job duties of handling and responding to incoming calls from their computers as described above, it is assumed they work at workstations with assigned desks and computers within the Dulles NLECC. Overall, the record does not support that that the lead dispatchers exercise any

independent judgment in designating dispatchers to a place which involves a degree of discretion that rises above the “routine or clerical” as contemplated in *Oakwood*. *Id.* at 693.

With regard to the element of time, there is no record evidence that the lead dispatchers are involved in or have any authority in the scheduling or approving of schedule changes of any employees. Although the Employer argues that the lead dispatchers assign break times and lunch periods to the dispatchers, the overall record establishes that the dispatchers discuss among themselves when they will take designated breaks based on their work loads. Although the lead dispatchers are tasked with handling after-hours employee call-offs, there are minimum staffing requirements for the Employer’s employees at the Dulles NLECC so that when an employee unexpectedly calls off, a call-in employee is often not necessary. If it is necessary to call in an employee, the lead dispatcher follows a list prepared by management with employee contact information. There is no evidence that a dispatcher’s specific skills are considered by the lead dispatcher when calling in employees to fill an empty shift. Indeed, the record evidence demonstrates that empty shifts are available to all dispatchers. Thus, the lead dispatchers do not perform assessments which require the use of independent judgment to support a supervisory finding. See, *G4S Government Solutions, Inc.*, 363 NLRB No. 113, slip op. at *3 (Feb. 10, 2016) (citing *Volair Contractors, Inc.*, 341 NLRB 673, 675, fn. 10 (2004) (“assigning work to employees on the basis of their known job skills does not require use of independent judgment.”)). Moreover, there is no record evidence that suggests that the lead dispatchers have authority to require dispatchers on the list to report to work to fill empty shifts. The responsibility to secure off-duty employees to report to work establishes assignment authority if the putative supervisor can *require* those employees to report, not when the putative supervisor can merely *request* it. *Heritage Hall, E.P.I Corporation*, 333 NLRB 458, 459 (2001) (LPN’s role in finding volunteers to fill vacant shifts does not confer supervisory status). I find that the Employer has not sufficiently established any exercise of supervisory authority regarding the scheduling of other employees. See, *Golden Crest*, 348 NLRB at 728-730 (2006). Thus, I conclude that the record does not support that the lead dispatchers appoint dispatchers to a time, as contemplated by *Oakwood*.

With regard to the element of duties, the Employer argues that the lead dispatchers use independent judgment in assigning and directing the duties and tasks of the dispatchers. However, the overall record establishes that the dispatchers’ day-to-day tasks are largely determined by discussion among themselves. Beyond their experience level as a level I, II, or III dispatcher, there is no evidence that the lead dispatchers perform any detailed analysis of the dispatchers’ abilities in relation to what they will do during their shift. Additionally, there is no evidence that the lead dispatchers make any isolated reassignments concerning the dispatchers.¹⁴ The overall record demonstrates that the dispatchers’ assignments are routine in nature and are largely guided by the IRGs, SOPs, and operational manuals. The evidence is insufficient that assignment of duties and direction provided to them by the lead dispatchers requires the use of independent judgment or involves a “degree of discretion that rises above routine or clerical.” *Oakwood*, 348 NLRB at 693.

¹⁴ At any rate, the Board has found the switching of tasks by lead persons among employees assigned to their line or department insufficient to confer supervisory status. *Croft Metals*, 348 NLRB 717, 721 (2006).

ii. Responsible Direction

In *Oakwood*, the Board interpreted the Section 2(11) phrase “responsibly to direct” as follows: “If a person on the shop floor has men under him, and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided that the direction is both responsible...and carried out with independent judgment.” *Oakwood*, 348 NLRB at 690-691.

While there is record evidence demonstrating that the lead dispatchers oversee the day-to-day performance of the dispatchers and act to correct issues that arise¹⁵ at the Dulles NLECC, the overall record demonstrates that all of the experienced dispatchers provide on-the-job oversight and assistance to the less experienced dispatchers. At any rate, as noted, dispatcher duties are routine in nature and are largely guided by the IRGs, SOPs, and operational manuals. Notably, the record further demonstrates that any dispatcher can report on the deficiencies of another to the ASL who independently decides what, if any, action to take. With specific regard to the lead dispatchers’ review of dispatcher reports, such reports are largely dictated and guided by the IRGs, SOPs and operating manuals. They are reviewed by a lead dispatcher mostly for formatting and grammatical errors. The Employer has not demonstrated that the lead dispatchers direct the other dispatchers using independent judgment, or that lead dispatchers’ direction of the other dispatchers involves a degree of discretion rising above the merely routine. *Community Education Centers, Inc.*, 360 NLRB 85, 86 (2014) (citing *Oakwood*, 348 NLRB at 692-693).

For direction to be responsible, the person directing must have oversight of another’s work and be accountable for the other’s performance. To establish accountability, it must be shown that the putative supervisor is empowered to take corrective action, *and* that there is a “prospect of adverse consequences” for others’ deficiencies. *Community Education Centers*, 360 NLRB at 85; *Oakwood*, 348 NLRB at 691-692, 695.

The Employer argues that the lead dispatchers are responsible for dispatchers’ “failure to perform directives” which establishes accountability. However, the Employer has not established that any of the lead dispatchers are *accountable* for their actions in directing the dispatchers. While the lead dispatchers have responsibility with regard to day-to-day direction of the dispatchers, especially during the second and third shifts when no upper management are physically present at the Dulles NLECC, there is no evidence that any lead dispatchers have

¹⁵ To the extent that the Employer argues in its brief that lead dispatchers use discretion in adjusting employee grievances, the record does not support such argument and, at most, generally states in a conclusory manner that lead dispatchers resolve disputes among the dispatchers. This type of evidence does not rise to the level discussed by the Board in *ITT Lighting Fixtures*, 249 NLRB 441, 442 (1980) as argued by Employer (group leaders found supervisors with authority to adjust employee grievances where they were required to issue oral warnings to employees for violation of employer's rules and exercised independent judgment in the performance such duties).

suffered any adverse consequences or received any discipline concerning the deficient performance of any dispatchers. The Employer merely argues in a conclusory manner that the lead dispatchers are judged and held accountable for the overall effectiveness of their shift, which includes the dispatchers' performance on the shift. That the lead dispatchers report to the ASL on the deficiencies of dispatcher does not demonstrate accountability where there is no evidence that there is any resulting prospect of adverse consequences for the lead dispatchers. Further, that the lead dispatcher job description references that lead dispatchers "are accountable for successful job performance" does not on its own establish accountability. The overall record does not demonstrate that the Employer imparted clear and formal notice to any of the lead dispatchers that they will be held accountable for the job performance of any employees. See, *Golden Crest*, 348 NLRB at 731. Thus, I find that the Employer has not met its burden to establish that the lead dispatchers responsibly direct employees, as contemplated by *Oakwood*.

iii. Discipline

The Employer argues that the lead dispatchers administer discipline under steps one and two of its four-step progressive discipline policy. In this regard, the record includes e-mails written by lead dispatchers to the ASL documenting dispatcher deficiencies. Most of the e-mails appear to be reports of the of the lead dispatchers' observations of the dispatcher's performance. None of the e-mails include any recommendations for formal discipline. Notably, one e-mail referenced as a "non-documented (official) verbal warning" further states that "if improvements are not made," the lead dispatcher will discuss the matter with the ASL and the *warning would become documented*. Even if these documented observations are included in the dispatchers' personnel files, it appears that, at most, non-disciplinary verbal warnings or counselings. As such, I consider that the lead dispatchers' monitoring of dispatcher duties and reporting performance deficiencies does not confer supervisory status on the lead dispatchers. These actions are merely reportorial; the ASL, not the lead dispatchers, review and determine all discipline related to dispatchers. As noted, the record is devoid of any evidence that any lead dispatchers have been disciplined for failures of dispatchers related to their performance. Although the Employer argues that the lead dispatchers' reports about dispatcher deficiencies have resulted in dispatchers being placed on PIPs, one of which resulted in termination, and "directly impact the dispatchers' job status," none of the PIPs in the record reference that they are in any part based on the lead dispatchers' reports or recommendations. The lead dispatchers' addressing of dispatcher performance deficiencies, without making any recommendation for future discipline does not confer supervisory authority. *Williamette Industries, Inc.*, 336 NLRB 743, 744 (2001). See also, *Lakeview Health Center*, 308 NLRB 75, 78-79 (1991) (an individual's mere reporting of misconduct without any recommendation of discipline is not an effective recommendation of discipline under Section 2(11)). Contrary to the Employer's assertion, I find that the lead dispatchers have no authority to discipline or effectively recommend discipline. I further note that while there is some record evidence that the lead dispatchers have participated in training in leadership and supervisory skills, there is no evidence that they have been trained regarding administration of discipline under the Employer's progressive discipline policy or evidence that the lead dispatchers have access to employee disciplinary records or personnel

files. Conclusionary statements without specific explanation are not enough. *Chevron Shipping Co.*, 317 NLRB 379, 381, fn. 6 (1995).

iv. Hiring and Promotion

There is no claim that the lead dispatchers possess supervisory authority to hire or promote. Rather, the Employer asserts that they make effective recommendations for hiring and promotion of other employees. I disagree. With regard to hiring, there is one example in the record in which ALS Robson asked the lead dispatchers via e-mail for their “thoughts” about six listed candidates for hiring. Although the record indicates that resumes of these candidates were reviewed by the lead dispatchers, the record is unclear as to what was provided. The record is absent of evidence that any of the named candidates referenced in ALS Robson’s e-mail were hired or not hired based on any input from the lead dispatchers; one of the candidates is noted in the record as “being in the hiring process.” As argued by Employer in its brief, to find recommendations to be “effective,” there must be some evidence that the recommendations have some independent effect or, at the very least, that they are normally followed. *Fred Meyer Alaska*, 334 NLRB 646, 649 (2001) (managers found supervisors because they (1) interviewed candidates on their own and made recommendations that were accepted by the food managers *without independent investigation*, or (2) attended interviews with the food manager, and their resulting recommendations *were “typically followed”*) (emphasis added). Here, there is no such evidence. At most, one lead dispatcher responded to Robson’s e-mail with vague comments about three candidates, but without any specific recommendation. The record does not support the Employer’s arguments that the lead dispatchers are statutory supervisors based on their authority to effectively recommend hiring.

With regard to promotion, there is one example in the record in which ALS Robson asked the lead dispatchers via e-mail for their “thoughts on areas in need of improvement” regarding a dispatcher that Robson was contemplating about undergoing training to become a lead dispatcher. One lead dispatcher responded to Robson’s e-mail, stating concerns about the dispatcher’s attendance and level of confidence. There is no evidence that the lead dispatcher recommended that the dispatcher be promoted to lead dispatcher or that dispatcher in question was promoted. Rather, the record merely indicates the dispatcher is performing lead duties on a trial basis. The record does not support the Employer’s argument that the lead dispatchers are statutory supervisors based on their authority to effectively recommend promotion.

v. Other Secondary Indicia

While the Board has held that secondary indicia can be a factor in establishing supervisory status, it is well established that where putative supervisors are not shown to possess any of the primary supervisory indicia, secondary indicia alone are insufficient to establish supervisory status. *Golden Crest*, 348 NLRB at 730, fn. 10; *Ken-Crest Services*, 335 NLRB 777, 779 (2001).

The Employer submitted into evidence the lead dispatcher job description, which purports to designate them as supervisors. The Board has held that job descriptions, without more, do not establish actual supervisory authority. *Training School at Vineland*, 332 NLRB at 1416 (“Job descriptions or other documents suggesting the presence of supervisory authority are not given controlling weight. The Board insists on evidence supporting a finding of actual as opposed to mere paper authority.”). It is well settled that job descriptions without more are not controlling to establish supervisory status. *K.G. Knitting Mills*, 320 NLRB 374 (1995). There is no evidence that the lead dispatchers are involved in any scheduled performance appraisals of the dispatchers as the record indicates there is no performance appraisal system at this time for any of the petitioned-for employees. The lead dispatchers’ involvement in on-the-job training of new and less experienced operators does not support supervisory authority where the record demonstrates that seasoned dispatchers similarly conduct the same training. At any rate, the Board has frequently found that employees with training or instructional duties are not supervisors within the meaning of the Act. See, *The Washington Post Co.*, 242 NLRB 1079, 1083 fn. 15 (1979) (citing *House of Mosaics*, 215 NLRB 704, 712 (1974) (“having the responsibility of training new employees does not invest employees with supervisory authority within the meaning of the Act.”). Finally, none of the lead dispatchers attend any management meetings.

IV. CONCLUSION AND ORDER

Based on the record evidence, the Employer has established that the petitioned-for employees are guards under Section 9(b)(3) of the Act and can be represented only by an all-guard union. Because Petitioner represents employees other than guards, it is not entitled to be certified as the employees’ representative. It is hereby ordered that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board’s Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board’s Rules and Regulations.

A request for review must be E-Filed through the Agency’s website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.¹⁶ A party filing a request for

¹⁶ On October 21, 2019, the General Counsel (GC) issued Memorandum GC 20-01, informing the public that Section 102.5(c) of the Board’s Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency’s E-Filing

June 26, 2020

review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Issued at Baltimore, Maryland this 26th day of June 2020.

(SEAL)

/s/ Sean R. Marshall
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system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.